

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re. PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE)	Civil Action No. 01-12257-PBS
LITIGATION)	
_____)	
)	Hon. Patti Saris
THIS DOCUMENT RELATES TO THE)	Chief Mag. Judge Marianne B. Bowler
AMENDED MASTER CONSOLIDATED)	
CLASS ACTION)	
_____)	

**UNITED STATES' CROSS-MOTION TO
QUASH SUBPOENA OF NHIC EMPLOYEE**

On or about October 28, 2005, this Court issued a deposition subpoena to NHIC. Both current and former employees of NHIC, a Medicare carrier, are covered by the agency's "Touhy regulations," 45 C.F. R. Part 2, which prohibit current and former employees from testifying about information that they acquired in the course of performing their official duties, unless they first obtain agency approval. Aventis Pharmaceuticals, Inc., on behalf of all Defendants in the AWP-MDL, has not complied with the applicable regulations, even though the testimony sought is clearly covered by the regulations. Pursuant to Local Civil Rule 7(m), the Government has asked Aventis to withdraw the subpoena, and it has refused to do so.

Therefore, the United States respectfully moves to quash the subpoena of any NHIC employee pursuant to Fed. R. Civ. P. 45(c)(3). A proposed Order is attached hereto.

DATED: March 17, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, George B. Henderson, II, hereby certify that on this date I caused copies of the foregoing document to be served upon counsel for each party by electronic transmission through the ECF system to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ George B. Henderson, II
George B. Henderson, II

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ORDER

Having considered (1) Aventis Pharmaceutical's Motion to Compel Deposition of an NHIC Employee, (2) the United States' Motion to Quash Subpoena of NHIC employee, and (3) the briefs submitted by the parties, it is hereby ORDERED that Aventis Pharcaceutical's Motion to Compel is DENIED, and that the subpoena issued to NHIC for deposition testimony is hereby QUASHED.

Marianne B. Bowler
Chief United States Magistrate Judge